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VIA ECF

The Honorable Arthur D. Spatt
United States District Judge
100 Federal Plaza
P.O. Box 9014
Central Islip, NY 11722

Re: *Victor Taraborelli v. MBI Associates, Inc.*
Case No. 2:10-cv-05130-ADS-ETB

Dear Judge Spatt:

We represent Defendant MBI Associates, Inc. ("MBI") in this matter. This letter is in response to the correspondence filed with the Court by counsel for Plaintiff on July 27, 2011, wherein Plaintiff requested that MBI's motion be returned to it as undocketed or disregarded for an alleged failure to abide by Your Honor's Individual Rules for submitting summary judgment motions (Section IV.D.). However, Plaintiff is mistaken as to the nature of the motion filed by MBI, as the motion it filed on July 11, 2011 (Doc. No. 8) is a motion to dismiss for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1), not a motion for summary judgment. While MBI argues in the motion that it is entitled to summary judgment in the alternative, the motion is still a motion to dismiss, which does not require a pre-motion conference nor an exchange of Rule 56.1 statements.

Moreover, MBI believes that Plaintiff's letter is nothing more than an attempt by counsel for Plaintiff to distract the Court from the fact that Plaintiff has failed to timely respond to MBI's motion to dismiss. As such, MBI respectfully requests that the Court deny Plaintiff's request to return or disregard MBI's motion to dismiss.

Thank you for Your Honor's time and consideration in this matter.

Respectfully submitted,

KAUFMAN BORGEEST & RYAN LLP

A handwritten signature in black ink, appearing to read 'S. Alves'.

Sergio Alves